

**Note: This Notice was published in the S.C. State Register March 28, 2008:**

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
PUBLIC NOTICE  
NOTICE TO AMEND AIR QUALITY STATE IMPLEMENTATION PLAN**

Statutory Authority: S.C. Code Section 48-1-10, *et seq.*

The South Carolina Department of Health and Environmental Control (the Department) is proposing to amend the South Carolina Air Quality State Implementation Plan (SIP) to meet obligations of the United States Environmental Protection Agency (EPA). Interested persons are invited to present their views in writing to Maeve S.R. Mason, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by April 28, 2008, the close of the drafting comment period. The Department is also conducting a public hearing on this issue. The hearing will be held on April 28, 2008, at 10:00 am in Room 3141 of the Aycock Building, 2600 Bull Street, Columbia, South Carolina. The public is invited to attend.

**Synopsis:**

On September 27, 1996, a Memorandum of Agreement (MOA), negotiated between the Department and the South Carolina Department of Transportation (SC DOT), was published in the *South Carolina State Register*. The purpose of the MOA was to formally incorporate the applicable provisions of the transportation conformity review process in accordance with the requirements of the Federal Clean Air Act Amendments (CAAA), as promulgated by the EPA on November 24, 1993 (58 FR 62188) in 40 CFR Part 51, Subpart T, and as amended August 7, 1995 (60 FR 40098), and November 14, 1995 (60 FR 57179). Under those authorities, no department, agency, or instrumentality of the Federal government or a State government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity that does not conform to the SIP. The transportation conformity rule requires Federal and State agencies to determine, prior to taking any action on transportation plans, programs, and projects, that such action will conform to a SIP to maintain the National Ambient Air Quality Standards (NAAQS). The transportation conformity regulation applies only to areas that are designated nonattainment or maintenance for any of the criteria pollutants (ozone, carbon monoxide, small particulate matter, sulfur dioxide, nitrogen dioxide, and lead).

On August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808), the EPA promulgated amendments to the transportation conformity rule to streamline and clarify the criteria and procedures for determining the conformity of transportation plans, programs, and projects. The State was required by 40 CFR Part 51, Subpart T, Section 51.390 to amend the SIP by specifically removing any previously-applicable implementation plan transportation conformity requirements and submitting a revision to the SIP that addresses all requirements of 40 CFR Part 93, Subpart A. A Notice of General Public Interest was initially published in the *South Carolina State Register* on August 25, 2000, and was revised on August 22, 2003. A staff-conducted public hearing was held on the proposed revision on September 22, 2003. The SIP amendment was submitted to EPA for final approval on November 14, 2003. EPA published the approval of the revision in the *Federal Register* (69 FR 4245) on January 29, 2004.

In accordance with these requirements and as part of the 2004 SIP amendment, the Department incorporated into the SIP a new MOA to implement Section 176 of the CAAA, as amended (42 U.S.C. 7401, *et seq.*), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR Part 93, Subpart A. The parties to this MOA are as follows: each of the Metropolitan Planning Organizations (MPO) as described in Exhibit 1, the Department, SC DOT, Federal Highway Administration - South

Carolina Division Office (FHWA), the Federal Transit Administration (FTA), the EPA Region 4 (EPA), and local publicly-owned transit agencies not represented by aforementioned MPOs. Exhibit 2 of the MOA is the “South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects,” which provides for interagency consultation, resolution of conflicts, and public consultation procedures. The parties to this MOA agreed to conduct transportation conformity determinations in accordance with the provisions of 40 CFR Part 93, Subpart A as listed in Exhibit 3 of the MOA.

On May 6, 2005, the EPA promulgated a final rule entitled, “Transportation Conformity Rule Amendments for the New PM<sub>2.5</sub> National Ambient Air Quality Standard: PM<sub>2.5</sub> Precursors” (70 FR 24280). This final rule specified the transportation-related PM<sub>2.5</sub> precursors and when they would apply in transportation conformity determinations in PM<sub>2.5</sub> nonattainment and maintenance areas. The Department is required by 40 CFR Part 51, Subpart T, Section 51.390 to amend the SIP by specifically incorporating several requirements from the Federal Transportation Conformity Rule that address the consultation process, as well as establish that SIPs must include written commitments of mitigation measures.

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law. SAFETEA-LU amended the CAAA by: changing the required frequency of transportation conformity determinations from three years to four years; providing two years to determine conformity after new SIP motor vehicle emissions budgets are either found adequate, approved, or promulgated; adding a one-year grace period before the consequences of a conformity lapse apply; providing for an option for reducing the time period addressed by conformity determinations; streamlining requirements for conformity SIPs; and providing procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs. SAFETEA-LU section 6011(g) requires that the EPA revise the transportation conformity rule as necessary to address these changes by August 10, 2007. On May 2, 2007, the EPA proposed changes to the transportation conformity rule to make it consistent with the CAAA as amended by SAFETEA-LU. The Department is required by 40 CFR Part 51, Subpart T, Section 51.390 to amend the SIP by specifically incorporating several requirements from the Federal Transportation Conformity Rule that address the aforementioned changes.

On January 24, 2008, the EPA again promulgated amendments to the Transportation Conformity Regulations to finalize provision that were published in May 2007 (73 FR 4420). These amendments are necessary to make the final rule consistent with the CAA Section 176(c) as amended by SAFETEA-LU, including changes to the regulations to reflect that the CAA now provides more time for state and local governments to meet conformity requirements, provides a one-year grace period before the consequences of not meeting certain conformity requirements apply, allows the option of shortening the timeframe of conformity determinations, and streamlines other provisions.

The Department proposes to amend its SIP to address the requirements of the Transportation Conformity Rule Amendments for the New PM<sub>2.5</sub> National Ambient Air Quality Standard: PM<sub>2.5</sub> Precursors and the SAFETEA-LU amendments, pursuant to Section 176(c) of the CAAA.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**NOTICE OF AMENDMENT TO THE  
SOUTH CAROLINA AIR QUALITY IMPLEMENTATION PLAN  
CHAPTER 61**

Statutory Authority: 1976 Code Section 48-1-10, *et seq.*

**SOUTH CAROLINA TRANSPORTATION CONFORMITY  
MEMORANDUM OF AGREEMENT**

Acronyms used in this document

ANATS	Anderson Area Transportation Study
ARTS	Augusta Regional Transportation Study
CAA	Clean Air Act
CFR	Code of Federal Regulations
CHATS	Charleston Area Transportation Study
COATS	Columbia Area Transportation Study
DHEC	South Carolina Department of Health and Environmental Control
FHWA	Federal Highway Administration South Carolina Division Office
FLATS	Florence Area Transportation Study
FTA	Federal Transit Administration
GPATS	Greenville-Pickens Area Transportation Study
GSATS	Grand Strand Area Transportation Study
MPO	Metropolitan Planning Organization
MOA	Memorandum of Agreement
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
USDOT	United States Department of Transportation
USC	United States Code
US EPA	United States Environmental Protection Agency
RFATS	Rock Hill-Fort Mill Area Transportation Study
SCDOT	South Carolina Department of Transportation
SIP	State Implementation Plan
SPATS	Spartanburg Area Transportation Study
STIP	Statewide Transportation Improvement Programs
SUATS	Sumter Area Transportation Study
TCM	Transportation Control Measures
TIP	Transportation Improvement Program
TP	Transportation Plan

The purpose of this Memorandum of Agreement (MOA) is to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 United States Code (U.S.C) 7401 *et seq.*), and regulations under 40 Code of Federal Regulations (CFR) Part 93, Subpart A with respect to the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation (USDOT), by metropolitan planning organizations (MPOs), and by the South Carolina Department of Transportation (SCDOT) or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C Chapter 53). This MOA sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable implementation plans developed according to Part A, Section 110 and Part D of the CAA for the sections of the federal rule it covers (i.e., 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c)). All other criteria and

procedures for demonstrating and assuring conformity of transportation activities are found in the federal conformity rule at 40 CFR 93.

This is an MOA concerning the criteria, interagency consultation procedures and enforceable commitments related to conformity of transportation plans, programs and projects in South Carolina areas designated as non-attainment or maintenance for applicable National Ambient Air Quality Standards (NAAQS), pursuant to the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

The Parties to this MOA are as follows: each of the MPOs as described in Exhibit 1, the South Carolina Department of Health and Environmental Control (DHEC), the SCDOT, the Federal Highway Administration South Carolina Division Office (FHWA), the Federal Transit Administration (FTA), the United States Environmental Protection Agency Region 4 (EPA), and local publicly-owned transit agencies, not represented by aforementioned MPOs, in non-attainment and maintenance areas.

WHEREAS, the CAA, as amended (42 U.S.C. 7401, *et seq.*), require the State of South Carolina to submit a revision to the *South Carolina Air Quality Implementation Plan*, also known as the State Implementation Plan (SIP) containing the interagency consultation procedures and enforceable commitments related to conformity of transportation plans, programs and projects in areas designated as air quality non-attainment or maintenance in order to conform to the purpose of the SIP to meet national ambient air quality standards; and,

WHEREAS, the CAA as amended (42 U.S.C. 7401, *et seq.*) (specifically Sections 121, 174, and 176), 40 CFR, Part 93, Subpart A, Title 23 U.S.C. 134, and 23 CFR Part 450 Subpart C, require intergovernmental consultation (1) before findings of conformity for the plans, programs and projects are made, and (2) for the development and submittal of applicable implementation plan revisions; and,

WHEREAS, the CAA, as amended (42 U.S.C. 7401, *et seq.*) in Section 110(a)(2)(A) and (E) require SIP revisions to be enforceable under state law, and “in order for EPA to approve the implementation plan revision submitted to EPA-under this Subpart, the plan revisions must address and give full legal effect to the following three requirements of Part 93, Subpart A: §§ 93.105, 93.122(a)(4)(ii) and 93.125(c)” and,

WHEREAS, the MPOs were created by federal highway and transit statutes for the spending of federal highway or transit funds within the MPO boundaries and have the authority for planning, programming, and coordination of federal highway and transit investments; and,

WHEREAS, the DHEC has been designated pursuant to South Carolina law and by the EPA as the State air quality planning agency and as the state administrator of the approved Air Quality Program for the State of South Carolina; and,

WHEREAS, the SCDOT has been designated as the State transportation planning agency under South Carolina law to carry out the statewide transportation planning process required by Title 23 U.S.C. 135, and has the authority for planning, programming, and coordination of federal highway and transit investments in areas that are not within the MPO boundaries; and,

WHEREAS, the FHWA and FTA are agencies of the USDOT and are responsible for review and approval of the conformity determinations prepared for compliance with 23 U.S.C. and 49 U.S.C., respectively; and,

WHEREAS, the EPA is responsible for providing comment on conformity determinations and has the authority to find adequate or approve motor vehicle emissions budgets that are to be used to demonstrate conformity; and,

WHEREAS, the local publicly-owned transit agencies in nonattainment or maintenance areas shall be responsible for providing support on transportation planning activities to the other Parties of this MOA.

**NOW, THEREFORE, it is hereby agreed:**

The Parties shall cooperatively support and implement the interagency consultation procedures contained herein in order to ensure that the plans, programs and projects adopted by the Parties conform to the purpose of the SIP to meet national ambient air quality standards for any applicable criteria pollutant.

It is further agreed and understood by each Party that:

1. The conformity of plans, programs, and projects funded under Title 23 U.S.C and the Federal Transit Act shall be determined pursuant to the CAA, as amended (42 U.S.C. 7401, *et seq.*); and as provided in 40 CFR Part 93 Subpart A, as amended; and pursuant to the “South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects”, a copy of which is attached as Exhibit 2.

2. This MOA including Exhibit 1 and Exhibit 2 will constitute a revision to the South Carolina SIP required by Section 176 of the CAA, as amended (42 U.S.C. 7401, *et seq.*), and will govern interagency consultation requirements for transportation conformity determinations in the State of South Carolina.

3. This MOA addresses and gives full legal effect to the following three requirements of the Federal Transportation Conformity Rule, 40 CFR Part 93, Subpart A: (1) 40 CFR 93.105, which addresses consultation procedures; (2) 40 CFR 93.122 (a)(4)(ii), which stipulates that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled; and (3) 40 CFR 93.125(c), which stipulates that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that project sponsors must comply with such commitments.

4. Execution of this MOA by each Party shall be by signature of each Party’s representative.

5. The provisions of this MOA shall be implemented through appropriate procedures, resolutions, or other means, in order to comply with the requirements of all Federal and State laws and regulations relating to the determination of conformity and the development of applicable implementation plan revisions. This MOA defines and delineates the roles, processes, and responsibilities of each signatory as provided in Exhibit 1 and Exhibit 2 made part of this MOA.

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Agreed to this \_\_ day of \_\_, 2008:

The Columbia Area Transportation Study  
Metropolitan Planning Organization

Board of Directors  
Central Midlands Council of Governments

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Agreed to this \_\_ day of \_\_, 2008:  
Greenville Area Transportation Study  
Metropolitan Planning Organization

Greenville County Planning Commission

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Agreed to this \_\_ day of \_\_, 2008:

The Spartanburg Area Transportation Study  
Metropolitan Planning Organization

, Chair  
Spartanburg Area Transportation Study Policy Committee

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Agreed to this\_\_day of \_\_, 2008:

Augusta Regional Transportation Study  
Metropolitan Planning Organization

, Executive Director  
Augusta-Richmond County Planning Commission

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Agreed to this\_\_day of \_\_, 2008:

Augusta Regional Transportation Study  
Metropolitan Planning Organization

, Chairman  
Aiken County Council

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Agreed to this\_\_day of \_\_, 2008:

Rock Hill-Fort Mill Area Transportation Study  
Metropolitan Planning Organization

, Chairman  
Rock Hill-Fort Mill Area Transportation Study Policy Committee

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Agreed to this\_\_day of \_\_, 2008:

Florence Area Transportation Study  
Metropolitan Planning Organization

, Planning Director  
Florence County

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Agreed to this\_\_day of \_\_, 2008:

Anderson Area Transportation Study  
Metropolitan Planning Organization

, Chairman  
Anderson Area Transportation Study

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Agreed to this\_\_day of \_\_, 2008:

Charleston Area Transportation Study  
Metropolitan Planning Organization

, Chairman,  
Charleston Area Transportation Study Policy Committee

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Agreed to this\_\_day of \_\_, 2008:

Grand Strand Area Transportation Study  
Metropolitan Planning Organization

, Chairman  
Grand Strand Area Transportation Study Policy Committee

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Agreed to this\_\_day of \_\_, 2008:

Sumter Area Transportation Study  
Metropolitan Planning Organization

, Chairman  
Sumter Area Transportation Study

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Agreed to this\_\_day of \_\_, 2008:

The South Carolina Department of Health and Environmental Control

, Deputy Commissioner  
Environmental Quality Control

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Agreed to this\_\_day of \_\_, 2008:

Recommended By

, State Highway Engineer  
Secretary of Transportation

The South Carolina Department of Transportation

, Executive Director

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Agreed to this\_\_day of \_\_, 2008:

Federal Highway Administration South Carolina Division Office

, Division Administrator

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Agreed to this\_\_day of \_\_, 2008:

The Federal Transit Administration

, Region Administrator

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Agreed to this\_\_day of \_\_, 2008:

The United States Environmental Protection Agency  
Region 4 Office

, Administrator  
EPA Region 4

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DRAFT

## EXHIBIT 1

The following descriptions are intended to distinguish legal boundaries only. The MOA and associated exhibits are not valid for any portions outside of South Carolina. The term “MPO” refers to the policy board for the organization that is designated under 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). Any change in the name, membership, and/or geographic distribution of these MPOs will not require a formal revision of the SC Transportation Conformity SIP. Documentation indicating a change in the name, membership, and/or geographic distribution will be submitted to each of the Parties, including EPA Region 4, for inclusion in the SC Transportation Conformity SIP.

### Description of Metropolitan Planning Organizations

Columbia MPO - That portion of Lexington, Richland, and Calhoun counties distinctly defined and known as the Columbia Area Transportation Study (COATS).

Greenville MPO - That portion of Greenville, Laurens, Pickens, and Spartanburg counties distinctly defined and known as the Greenville-Pickens Area Transportation Study (GPATS).

Spartanburg MPO - That portion of Spartanburg County distinctly defined and known as the Spartanburg Area Transportation Study (SPATS).

Augusta-Aiken MPO - That portion of Richmond and Columbia counties in the State of Georgia and that portion of Aiken County in the State of South Carolina distinctly defined and known as the Augusta Regional Transportation Study (ARTS).

Rock Hill-Fort Mill MPO - That portion of York County distinctly defined and known as the Rock Hill/Fort Mill Area Transportation Study (RFATS).

Florence MPO - That portion of Florence and Darlington counties distinctly defined and known as the Florence Area Transportation Study (FLATS).

Anderson MPO - That portion of Anderson County distinctly defined and known as the Anderson Area Transportation Study (ANATS).

Charleston MPO - That portion of Berkeley, Charleston and Dorchester counties distinctly defined and known as the Charleston Area Transportation Study (CHATS).

Grand Strand MPO - That portion of Horry and Georgetown counties distinctly defined and known as the Grand Strand Area Transportation Study (GSATS).

Sumter MPO - That portion of Sumter County distinctly defined and known as the Sumter Area Transportation Study (SUATS).

EXHIBIT 2

**South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects**

**A. General**

Pursuant to 40 CFR § 93.105, this document provides for interagency consultation (federal, state, and local), resolution of conflicts and public consultation procedures. Consultation procedures shall be undertaken prior to making transportation conformity determinations and prior to adopting applicable *South Carolina Air Quality Implementation Plan*, also known as the State Implementation Plan (SIP) revisions.

**B. Interagency Consultation Procedures: General Procedures Factors**

1. Representatives of the Metropolitan Planning Organizations (MPOs), the South Carolina Department of Health and Environmental Control (DHEC), the South Carolina Department of Transportation (SCDOT), and local publicly-owned transit agencies, not associated with the MPOs, shall collectively undertake an interagency consultation process in accordance with the procedures outlined herein with regional representatives of the United States Environmental Protection Agency (EPA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA) on the development of the applicable implementation plan, the list of transportation control measures (TCM) in the applicable implementation plan under Title 23 CFR § 450.314, the transportation plan (TP), the Transportation Improvement Program (TIP), any revisions to the preceding documents, and associated conformity determinations.

2. For the purposes of regular consultation, the affected agencies shall include:

- a. MPOs (Metropolitan Planning Organizations) in non-attainment or maintenance areas;
- b. DHEC (South Carolina Department of Health and Environmental Control);
- c. SCDOT (South Carolina Department of Transportation);
- d. FHWA (Federal Highway Administration South Carolina Division Office);
- e. FTA (Federal Transit Administration);
- f. EPA Region 4 (Environmental Protection Agency); and,
- g. Local publicly-owned transit agencies, not associated with the MPOs, in nonattainment or maintenance areas.

3. The MPO, as the lead transportation planning agency, shall have the primary responsibility in its designated non-attainment or maintenance area for developing the TP, the TIP, and for providing assistance for technical analyses by employing travel-demand modeling techniques, acquiring all necessary data, and coordinating these activities with agencies specified in Subsection B.2. The MPO shall work in consultation with SCDOT and local publicly-owned transit agencies, not associated with the MPOs, in developing these documents. The MPO shall be responsible for providing written notification of an initial meetings concerning transportation and related air quality issues to each of the affected agencies. Subsequent routine meetings will be agreed upon collectively by affected agencies. Scheduling changes shall be coordinated in a timely manner. When the MPO is not the lead transportation planning agency, SCDOT shall have the same responsibilities as the MPO in fulfilling all applicable provisions of the consultative process and transportation conformity determinations.

4. The MPO shall notify each affected agency of all transportation planning activities for all federal and non-federal projects that are regionally significant and therefore need to be included in regional emissions analysis when estimating emissions from mobile sources in nonattainment and maintenance areas.

5. DHEC, as the state air quality lead agency, shall have primary responsibility for developing transportation-related SIPs, air quality modeling demonstrations, emissions inventories, and related activities. Transportation-related SIPs shall be prepared by DHEC with the assistance of the affected agencies. DHEC shall

distribute documents to all affected agencies for review and comment. DHEC shall schedule public hearings to receive public comment on transportation-related SIPs. Comments and responses to comments shall be included in applicable SIP submittals to EPA.

6. For purposes of regular consultation, organizational representation shall be defined as follows:

- a. MPO, Executive Director or designee;
- b. DHEC, Environmental Quality Control Deputy Commissioner or designee;
- c. SCDOT, Secretary of Transportation or designee;
- d. FWHA, Division Administrator or designee;
- e. FTA, Regional Administrator or designee;
- f. EPA, Regional Administrator or designee; and,
- g. Local publicly-owned transit agencies.

7. Other specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

- a. The MPO, or SCDOT if there is no MPO for the area, shall be responsible for:
  - i. Developing transportation plans, projects, and TIPs;
  - ii. Evaluating the transportation impacts of TCMs;
  - iii. Developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions to DHEC for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects;
  - iv. Monitoring of regionally significant projects;
  - v. Developing system- or facility- based or other programmatic (non-regulatory) TCMs;
  - vi. Providing technical and policy input on motor vehicle emissions budgets;
  - vii. Ensuring and coordinating the performance of transportation modeling for the purposes of generating the TIP or projects, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments; and,
  - viii. Developing draft and final conformity determination documents for all transportation plans, programs, and projects.
  - ix. Developing and maintaining a written plan specifying the timeframes for the submittal of projects to be considered for inclusion in the transportation plan, TIPs, and projects; ensuring the plan is readily accessible upon request.
- b. DHEC shall be responsible for:
  - i. Developing emissions inventories;
  - ii. Developing emissions budgets;
  - iii. Conducting air quality modeling;
  - iv. Composing attainment demonstrations;
  - v. Revising control strategy implementation plan ~~revisions~~;
  - vi. Implementing regulatory TCMs; and,
  - vii. Compiling motor vehicle emissions factors.
- c. The SCDOT shall be responsible for:
  - i. Developing statewide transportation plans and Statewide Transportation Improvement Programs (STIPs);
  - ii. Providing technical input on new and proposed revisions to motor vehicle emissions budgets;
  - iii. Distributing draft and final project environmental documents to other agencies;
  - iv. Convening air quality technical review meetings on specific projects when requested by other agencies, or as needed;
  - v. Developing updated motor vehicle emissions estimates and projections; and

vi. Choosing and evaluating transportation models and associated methods and assumptions to be used in hot spot and regional emissions analyses.

d. The FHWA and FTA shall be responsible for:

- i. Ensuring timely action on final findings of conformity, after consultation with other agencies;
- ii. Providing guidance on conformity and the transportation planning process to agencies in interagency consultation; and,
- iii. Reviewing, commenting on, and approving conformity determinations.

e. The EPA shall be responsible for:

- i. Reviewing motor vehicle emissions budgets in submitted SIPs and finding them adequate or inadequate based on adequacy criteria and procedures;
- ii. Providing guidance on conformity criteria and procedures to agencies in interagency consultation;
- iii. Approving or disapproving submitted SIP revisions (including TCMs);
- iv. Providing modeling and emission inventory development assistance to the SCDOT, DHEC, and MPO; and,
- v. Providing comments on the regional emissions analyses and conformity determinations of transportation plans, TIPs, and projects.

f. The local publicly-owned transit agencies, not associated with the MPOs, in nonattainment or maintenance areas shall be responsible for:

- i. Supporting and conducting, as necessary, the transportation planning activities for public transportation service including transit operations; and,
- ii. Providing the MPO with the information necessary for annual endorsement of Federal Transit Administration programs.

8. Before adoption and approval of conformity analyses prepared for transportation plans, TIPs, and projects, the MPO and/or SCDOT, as the lead transportation planning agency, shall distribute a final draft of the documents, including supporting technical materials, to the affected agencies for review and comments. Affected agencies shall review and submit written comments to the lead agency within thirty (30) calendar days. The lead agency shall respond to written comments made by the affected agencies on transportation plans, TIPs, projects, or SIPs in writing within thirty (30) calendar days of receipt of such comments. Comments and responses to comments shall be distributed for review by all affected agencies. Following resolution of all significant issues, final documents shall be revised accordingly and submitted to the designated lead agency for formal adoption and approval.

9. Meetings of the group of affected agencies shall convene for the specific purpose of considering issues with regard to the conformity of transportation plans, TIPs, and projects with the transportation conformity SIP. The frequency of these meetings shall be determined jointly by the specified transportation and air quality lead agencies. Affected agencies shall meet on a regular basis, at least quarterly, unless the lead agencies determine there is a need for an earlier meeting or, alternatively, that there is no need for the regularly-scheduled meeting. Based upon comments received, the lead agency may schedule a meeting where consultation with all affected agencies concerned can be accomplished simultaneously for the resolution of comments and issues. Meeting agendas are the responsibility of the designated lead agency.

10. Where TCMs are to be included in applicable SIPs in urbanized non-attainment or maintenance areas, a list of TCMs shall be selected and developed by the MPO in cooperation with other affected agencies. This list of TCMs shall be maintained and distributed to all cooperating agencies by DHEC after its review and consultation with the MPO. The list of TCMs shall be made available for inspection or copying for all interested persons and agencies.

**C. Interagency Consultation Procedures: Specific Processes**

1. An interagency consultation process in accordance with Subsection B involving the MPO, DHEC, SCDOT, EPA, and FHWA/FTA shall be undertaken for the following:

a. Evaluating and choosing a model(s) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

b. For purposes of regional emissions analysis, the MPO shall actively consult with the affected agencies to determine which minor arterials and other transportation projects should be considered “regionally significant” projects (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel as defined by 40 CFR 93) and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. Prior to initiating any final action on these issues, the MPO shall consider the views of each agency that comments or responds in writing prior to any final action on these issues. If the MPO receives no comments within thirty (30) calendar days, the MPO may assume consensus by the affected agencies;

c. The MPO shall submit a list of exempt projects to affected agencies to evaluate whether projects otherwise exempted from meeting the requirements of 40 CFR Part 93 Subpart A (see Sections 93.126 and 127) should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason. The MPO shall allow thirty (30) calendar days for comments;

d. The MPO and/or SCDOT, in consultation with the affected agencies shall make a determination, as required by 40 CFR 93, whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

e. The MPO and/or SCDOT, in consultation with the affected agencies, shall identify, as required, projects located at sites in PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas and require a hot-spot analysis (except where a categorical hotspot finding has been made);

f. The MPO shall notify the affected agencies of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93 and allow a thirty (30) day comment period; and,

g. The SCDOT, in consultation with the affected agencies, shall cooperatively choose the appropriate conformity test(s) and methodologies for use in isolated rural non-attainment and maintenance areas, as required by 40 CFR 93 and for any non-attainment or maintenance area for which an emissions budget has not been developed and approved.

2. In accordance with Subsection B, an interagency consultation process involving the MPO, DHEC and SCDOT shall be undertaken for the following:

a. The MPOs, SCDOT, and DHEC, in cooperation with the affected agencies, shall evaluate events that will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93; and,

b. The MPOs, SCDOT, and DHEC, in cooperation with the affected agencies, shall consult on emissions analysis for transportation activities that cross the borders of MPOs or nonattainment areas. The MPOs

will enter into a Memorandum of Agreement that will define the effective boundary and the respective responsibilities for each MPO for regional emissions analysis.

3. For the purposes of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, the MPO and SCDOT will work together to cooperatively plan and analyze projects so that transportation conformity requirements are met.

4. a. In accordance with Subsection B, an interagency consultation process involving the MPO, DHEC, SCDOT, and recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws shall be undertaken to: (1) ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis (as defined by Subsection B.7.a.ix): and (2) ensure that any changes to those plans are immediately disclosed.

b. The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise, shall disclose such project to the MPO in a timely manner (as defined by Subsection B.7.a.ix). Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed; the issuance of administrative permits for the facility or for construction of the facility; the execution of a contract to design or construct the facility; the execution of any indebtedness for the facility; any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project; or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to the MPO within thirty (30) calendar days of acknowledgment of each project for which alternatives have been identified through the National Environmental Policy Act (NEPA) process, and in particular, any preferred alternative that may be a regionally significant project.

c. In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed: (1) not to be included in the regional emissions analysis supporting the currently conforming plan and TIP's conformity determination, and (2) not to be consistent with the motor vehicle emissions budget in the applicable implementation plan.

d. For the purposes of the procedures outlined herein "approve" of a regionally significant project<sup>22</sup> means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed; the issuance of administrative permits for the facility or for construction of the facility; the execution of a contract to construct the facility; any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project; or any written decision or authorization from the MPO that the project may be adopted.

5. In accordance with Subsections B and C.4, the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, shall cooperatively assume the location, design concept, and scope of projects that are disclosed to the MPO but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.

6. Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled, as per 40 CFR 93.122(a)(4)(ii).

7. The MPO, in accordance with Subsection B, shall notify DHEC, SCDOT, and local transportation agencies not associated with the MPOs, and shall seek their input for the design, schedule, and funding of

research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).

8. Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments, as per 40 CFR 93.125(c).

9. Within fifteen (15) calendar days subsequent to approval and adoption of final documents, including transportation plans, TIPs, conformity approvals, applicable implementation plans and implementation plan revisions, the lead agency (that is, either DHEC, the MPO, or SCDOT) shall provide copies of such documents and supporting information to all affected agencies.

#### **D. Resolving Conflicts**

1. Any conflicts among state agencies or between state agencies and an MPO shall be escalated to the Governor of South Carolina (Governor) if the conflict cannot be resolved by the heads of the involved agencies.

2. In the event that the affected agencies and MPO determines that every effort has been made to address concerns and no further progress is possible, the dissenting party shall notify the representative of DHEC, as defined in Subsection B.6.; citing 40 CFR 93 in any notification of a conflict which may require action by the Governor.

3. Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. DHEC has fourteen (14) calendar days within which to appeal a proposed determination of conformity (or other policy decision under this agreement) to the Governor after the MPO or SCDOT has notified DHEC of the resolution of all comments on such proposed determination of conformity or policy decision. Such fourteen (14) day period shall commence when the MPO or SCDOT has confirmed receipt by DHEC of the resolution of DHEC's comments. If DHEC appeals to the Governor, the final conformity determination must have the concurrence of the Governor. DHEC must provide notice of any appeal under this Subsection to the MPO and SCDOT. If DHEC does not appeal to the Governor within fourteen (14) calendar days, the MPO or SCDOT may proceed with the final conformity determination.

4. The Governor may delegate his or her role in this process, but not to the head or staff of DHEC, SCDOT, State transportation commission or board, or an MPO.

#### **E. Public Consultation Procedures**

Consistent with the requirements relating to public involvement, affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process that provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs. Commencing at the beginning of the public comment period, reasonable public access to technical and policy information considered by the agency will be provided prior to the agency taking formal action on conformity determinations for all transportation plans and TIPs. Any charges imposed for public inspection and copying of conformity-related materials shall be consistent with South Carolina Title 30 Chapter 4 Freedom of Information Act. In addition, any such agency must specifically address in writing any public comments claiming that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law. The opportunity for public involvement provided under this Subsection shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination. Any agency tasked with making a conformity determination must consider and respond to significant comments. No transportation plan, TIP, or project may be found to conform unless the determination

of conformity has been subject to a public involvement process in accordance with this Subsection, without regard to whether the DOT has certified any process under 23 CFR 450.

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